HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 867/05 (S/S)

Sampuran Chand,

VS

Union of India and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision: 22.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.867 (SS) OF 2005

No. 1468905L Havildar Sampuran Chand,
56 Engineer Regiment,
C/o 56 A.P.O.

.....Petitioner.

Versus

1. Union of India, through Secretary Minister of Defence, North Block, New Delhi.
2. The Chief of the Army Staff Army Head Quarters, New Delhi.
3. Officer Commanding Troops, Group Headquarters Bengal Engineer Grouip & Center Roorkee (Uttaranchal)
4. OIC Records,
   Bengal Engineer Group & Centre,
   Roorkee (Uttaranchal).

.....Respondents.

Sri Lalit Kumar, Advocate for the petitioner.
Mrs. Anjali Bhargava, Advocate for the Union of India.

Dated:22.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 8th April, 2005 (Annexure P-5) awarding the punishment of 'severe reprimand' and forfeiture of G.S. Pay and code of conduct under Section 64(e).

Brief stated, on 16th March, 1982, the petitioner joined the Regular Army as a soldier in the Corps of Engineers. According to the case of the petitioner between 1989 and 1997, the petitioner, due to his hard work, outstanding performance and unblemished record of service, he earned three promotions to the rank of Lance Naik, Naik and Havildar.

The petitioner vide Part II Order No. 3/070/0001/2003 dated 21st May, 2003 was selected for the appointment of Company Havildar Major (CHM). The said post of CHM was the only post available in the company and it was a higher post than the post of a Havildar, and its grant entailed increase in pay to the tune of Rs. 50/- per month.

On 28th February, 2005, the petitioner, on the basis of his established high career profile and qualifications was approved for promotion to the rank of Naib Subedar, who was a Junior Commissioned Officer's (JCO's) post, which is granted by the President of India under his own hand.

According to the petitioner, in the month of February, 2005 some one out of professional jealously made a complaint to the Commanding Officer of the of the petitioner that the petitioner had offered Rs. 20,000/- to a soldier of his own company, namely Sapper Bir Bahadur Ram, for recruitment of petitioner's nephew, namely Shri Sohal Lal in the Army, whereas the fact of the matter was the petitioner's abovenamed nephew had participated in the recruitment rally at Roorkee, which was conducted by the army authorities in the public glare and got selected on his own merit, after passing the prescribed tests,

On 8th April, 2005, the respondent no. 3 has passed an order awarding the punishment. The same is quoted below:-

"Severe Reprimand

001. 01468905L HAV/CAJ
SAMPURAN CHAND
SEVREP OC 08042005
Tried by summarily
Place of Offece: Roorkee
Date of Offence: Aug 2004
AA Section: 64(e)

Brief particulars of Offence : offered Rs. 20,000/- (Rupees Twnety thousand only) to No. 1484827H Spr Bir Bahadur Ram as a motive for procuring the enrolment of Sh Sohan Lal S/o Sh Darshan Lal.

Period under custody: Nil

Awarded by: Col S. Chowdhury,

OC Troops. (AFD-901 (Offence

Report) att to Records only.

FORFEITURE OF GS PAY

003 01468905L HAV/CAJ

SAMPURAN CHAND

FORGSP 08042005 ALL

3/0052/001/2005

Forfeitured of good service and good conduct pay under AA Sec-64(e) wef 08 Apr 05 by Col S Chowdhury, OC Tps, Gp HQ Coy, BEG & Centre Roorkee."

Learned counsel for the petitioner Sri Lalit Kumar has submitted that the aforesaid punishment is wholly against the statutory provisions of the Army Act inasmuch as Section 64 provides for the offences committed under Clause A to F. Clause E provides the punishment for a person, who directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person. The same is quoted below:-

"(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any there advantage or indulgence for any person in the service; or"

Section 80 of the Army Act, 1950 relates to the punishment of person other than officers, junior commissioned officer and warrant officers. Clause (g) relates to the severe reprimand or reprimand. Section 80 (g) is quoted below:-

"80. ***Punishments of persons other than officers, junior commissioned officers and warrant officers.-*** *Subject to the provisions of Section 81, a commanding officer or such other officer as is, with the consent of the Central Government specified by the (Chief of Army Staff), may, in the prescribed manner proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say:--*

(e) severe reprimand or reprimand."

A perusal of the aforesaid provision shows that the charge against the petitioner is with regard to the offering and such offering has neither been established nor is contained under Section 64(e) of the Act so as to provide sever punishment to the petitioner.

A counter affidavit has been filed by the Central Government, where the respondent has stated that the petitioner has confessed that he had paid Rs. 20,000/- but there is nothing on the record in order to show the same that the petitioner has confessed the same.

In view of the aforesaid statutory provisions contained under the Army Act, the punishment awarded to the petitioner cannot be allowed to stand.

A writ of certiorari is issued quashing the order terminating the services of the petitioner is quashed.

Petitioner is held eligible for the promotion to the rank up to Naib Subedar in pursuance of the approval made on 28th February, 2005.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

22.02.2006
Rathour